UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA,

v. 16 Cr. 370 (CM)

MATTHEW CONNOLLY
and GAVIN CAMPBELL BLACK,

Defendants.

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New York, N.Y.
October 24, 2019
10:30 a.m.

Before:

HON. COLLEEN MCMAHON
District Judge

APPEARANCES

GEOFFREY S. BERMAN
United States Attorney for the
Southern District of New York
BY: MICHAEL KOENIG
CHRISTINA BROWN
ALISON ANDERSON
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Attorneys for Defendant Gavin Campbell Black

(In open court)

THE COURT: Good morning.

(Case called)

MR. KOENIG: Good morning, your Honor. Michael Koenig on behalf of the United States. With me is Christina Brown, Alison Anderson, Kathryn Holbrook and Carol Sipperly.

THE COURT: Good morning.

MR. BREEN: Good morning, your Honor. Ken Breen and Phara Guberman on behalf of Matt Connolly, who is with us here in court today.

THE COURT: Good morning.

MR. LEVINE: Good morning, your Honor. Seth Levine and Scott Klugman and Miriam Alinikoff on behalf of Mr. Black, and Mr. Black is here with us today.

THE COURT: Good morning.

This matter is on for sentencing under docket number 16 Cr. 370, United States of America v. Matthew Connolly and Gavin Campbell Black, Mr. Connolly having been found guilty of one count of conspiracy to commit wire fraud and bank fraud and two counts of wire fraud, all are class B felonies, carrying statutory maximum penalties of 30 years' imprisonment, five years' supervised release, $1 million fine and a mandatory $100 special assessment; Mr. Black having been found guilty of one count of conspiracy to commit wire fraud and one count of wire fraud, those crimes being class B felonies and carrying the

same statutory maximum penalties.

In connection with today's proceedings I have received and reviewed the following, I have laid it out all very carefully: Presentence investigation reports prepared by United States Probation Officer Johnny Kim for Mr. Connolly. That's document 438 on the docket, filed on September 24, 2019; and for Mr. Black, document number 437 filed on September 23, 2019.

In connection with Mr. Connolly, I have a sentencing memorandum on behalf of Mr. Connolly. Exhibits A through L to that sentencing memorandum are letters from members of his and his wife's family. Exhibits M and N are letters from the Paul Hastings law firm to Mr. Kim concerning the objections to the PSR, as to which I will rule shortly.

I have a sentencing memorandum from the United States regarding defendant Matthew Connolly. There are as exhibits to that sentencing memorandum Exhibit A, a document authored by Mr. Connolly; Exhibit B, a declaration of Special Agent Michael McGillicuddy, and there is attached to that an exhibit, Exhibit 1, which is document 446-2. I asked for a modification of that exhibit, and I received that, and I'm going to call that Exhibit 1A to Agent McGillicuddy's affidavit, and I have that as well. Exhibit C is the plea agreement of someone I never heard of until yesterday named Takiyuki Yugami. Exhibit D are his 80-plus page sentencing minutes before Judge Rakoff.

Exhibit 5 are the sentencing minutes of Mr. Parietti.

In connection with Mr. Black, I have received a number of memoranda: A sentencing memorandum from the firm of Levine & Lee. By my count Exhibit 1 consists of 45 letters -- I may have miscounted the number of blue pages -- but at least 45 letters, many of them two, three or four pages long from family, friends, coworkers, his parents, his in-laws in New Zealand and his wife.

There is also a declaration of Seth Levine in support of Mr. Black's sentencing memorandum, and attach thereto are Exhibits A through Q.

In addition, Mr. Levine submitted a submission regarding the applicable sentencing guidelines and a declaration of Mr. Levine in support of that, together with Exhibits A, B, C, D and E.

I have a letter received October 22 and filed under seal concerning certain nonpublic matters.

I have received in response to my inquiry from the government a letter dated October 21, 2019 and a follow-up e-mail dated October 22, 2019 regarding the prisoner transfer program. I have also reviewed my own research on the subject, including a document called Guidelines for the Evaluation of Transfer Requests Submitted by Foreign Nationals that we found on the Internet; a transfer inquiry and review document that we found on the Internet; and a document from the law offices of

Alan Ellis in San Francisco and New York that describes that program.

In addition and with respect to both defendants, I have reviewed some rather more salient sentencing minutes from the Rabobank case, Judge Rakoff's sentencing of Messrs. Allen and Conti from Mr. Stewart. I have rereviewed the presentence report of Mr. Curtler and reviewed for the first time of Mr. Parietti. I have consulted a number of portions of the transcript and exhibits that were introduced during the course of the trial.

Is there anything else I should have received in writing prior to today's proceedings from the government?

MR. KOENIG: No, your Honor.

THE COURT: From Mr. Connolly?

MR. BREEN: No, your Honor.

THE COURT: From Mr. Black?

MR. LEVINE: No. Thank you, your Honor.

THE COURT: Thank you.

Has the government reviewed the presentence report?

MR. KOENIG: We have, your Honor.

THE COURT: Any additions, deletions or corrections?

MR. KOENIG: Yes. These are in connection to our reducing the number of requests that we originally told probation about.

THE COURT: I'm working with the number 130.

MR. KOENIG: Yes, yes, but the number became 130 after the probation --

THE COURT: Yes, I understand that, but I'm working with the number 130.

MR. KOENIG: OK. And then it changes also the intended loss.

THE COURT: Oh, there are a lot of changes. Believe me, there are a lot of changes.

MR. KOENIG: That's everything.

THE COURT: OK. Mr. Breen, have you reviewed the presentence report and gone over it with your client?

MR. BREEN: Yes, your Honor.

THE COURT: I will be hearing argument and will be reviewing the PSR, and I'm obviously going to make rulings on some objections.

Same question to you, Mr. Levine. Have you reviewed it and gone over it with your client?

MR. LEVINE: I have, your Honor. Thank you.

THE COURT: I have a specific question that I want to ask before we get into this, and that is with respect to Agent McGillicuddy's chart.

Am I correct that on page 2 -- by the way, I'm working with the chart that has the number I asked to be added to the end.

MR. KOENIG: Yes.

THE COURT: Am I correct that the sixth entry on -- the fifth and sixth entries actually -- the sixth and seventh entries on this chart relate to Exhibit 7-001 and deal with a count of acquittal as to Mr. Connolly, namely Count Ten?

MR. KOENIG: Yes, your Honor.

THE COURT: Thank you. Am I correct that the entry on the next page, the third page, the third entry dated 9/26/2007 relating to Exhibit 7-001, deals -- I'm sorry -- the first one -- the first one deals with Count Eight; is that correct?

MR. KOENIG: On page 3?

THE COURT: Page 2. Let's go to page 2. The entry is dated 9/26/2007.

The first page the first entry is 2/21/2005. The second page the first entry is 8/12/2007. The third page, the first entry is 10/18/2007. The third page, the first entry is 9/25/2008.

Let's just go to the first page. The first page, about two thirds of the way down there is an entry dated 7/20/2006 and the relevant exhibit is 8-001. Am I correct that that relates to Count Eight, a count of acquittal of Mr. Connolly?

MR. KOENIG: Yes.

THE COURT: And am I correct that the entries dated 9/26/2007, Exhibit 7-001, relate to Count Ten, a count of acquittal of Mr. Connolly?

MR. KOENIG: Yes.

THE COURT: Thank you. I just wanted to clear that up.

OK. So, I think the logical thing to do is to hear the defendants' objections to the presentence report and to hear the government's response to that first. And I will start with Mr. Connolly and then Mr. Black.

MR. BREEN: Your Honor, we have a myriad of objections.

THE COURT: Yes, I know.

MR. BREEN: But I will cut to the chase. We think that the nature and circumstances of the offense are atypical given that there was open and pervasive conduct, no steps to conceal and no profit demonstrated by Mr. Connolly.

THE COURT: I should say you can rest assured I have been immersed in the arguments that you've made in writing, both of you, just so you know that. That said, you may say whatever you want.

MR. BREEN: Well, I will reference the discussion we had on the loss amount. The loss amount is completely incalculable. It completely ignores how swaps work in the market, how swaps are meant to offset risk, and the zero sum game is just a ridiculously ill-informed way of describing a swap, because most of the market that is in swaps is derisking. And you heard that from every witness who talked about why they

hedged, what is hedging the market. And the simplistic argument that if somebody has hedged, that that loss was passed down the line to somebody else makes no sense and is not something that could be used here, because that victim of somebody down the line, they haven't shown that it wasn't Deutsche Bank who eventually was the one who isn't in a completely hedged position, or any of the other banks that have pled guilty to manipulating LIBOR. They haven't proved any loss. The numbers that they prove is a methodology that's completely made up, I mean based on numbers that --

THE COURT: They usually are in these kinds of cases, Mr. Breen.

MR. BREEN: Right. But usually there is actual data that is trustworthy, that the government didn't say itself that we couldn't use it because it was so not trustworthy, and then they turn around and use it themselves, which is what they did. Usually it's not a situation where there is a presumption that every submission that they say was an ask was moved from a reasonable range or moved from a number that would be a real supportable number to something else. No testimony at all in the case from any of the cooperators or anybody else whether the submission moved, whether or not the fixing moved.

They proved nothing. They didn't prove victims either, right? How do you prove -- the victims they presented in the indictment weren't the same victims that they presented

at trial, aren't the same victims that they presented in sentencing. Again, you know, presenting victims, they acknowledge at Mr. Parietti's sentencing hearing that in order to determine a real loss or an actual loss you would have to figure out their hedging position. Well, of course, the whole case has been about that.

So, there shouldn't be any ten victims. They proved zero victim, zero loss. The idea that Matt Connolly is a supervisor and deserves an enhancement for that is preposterous. First, given the active role he played, supervisor only in name, not supervising to Parietti, who made more money than him always, who was a managing director when Matt wasn't, Matt not even being a trader but in name being on the desk.

So, not only that, fact specific to Matt Connolly, but you look at the government's position they took with Curtler, Mr. Curtler was a supervisor of a submissions desk and supervised Mr. King and really was the kingpin of the entire submissions situation that was happening in London. I mean they can't take a position that is so disparate and say that Mr. Curtler was not a supervisor but Mr. Connolly is.

THE COURT: Well, they can, but I might not find it very appealing.

MR. BREEN: Right. And because they took that position and that's the sentence, you know, if you were to

sentence Mr. Connolly with that enhancement, it would be disparate, and that's something that the guidelines seek to avoid.

With regard to intended loss, they assume with the loss number that every loss was intended. But how is the loss intended if you thought the other side was hedged, like 99 percent of the marketplace?

We didn't present it at trial, but we heard from our expert that 99.9 percent of the risk in the market -- in the spot market -- dissipates by hedges if you take .01 percent.

Abuse of trust? Abuse of truss is not an enhancement that should apply. I mean that's something that usually applies in the fiduciary context, not in a situation where you have you a counterparty. I haven't seen any authority that says that they have a fiduciary duty to a counterparty in a trade, to Deutsche Bank? Abuse of position of trust? Deutsche Bank pled guilty here -- I'm not sure -- and paid enormous fines. I'm not sure there is a fiduciary duty to a bank that knew about it, put everything in place, had no rules against it, encouraged the spot desk to sit next to the money market desk. There is just no enhancement there.

Abuse of trust to BBA? They had no rules until after Matt Connolly left the bank voluntarily. I'm not sure how that could ever form any kind of relationship -- fiduciary or otherwise -- that could be abused by what happened here.

None of those enhancements should apply. There shouldn't be any loss amount that is on top.

I missed one: Activity happened in a foreign jurisdiction. An enhancement that's based around the idea that when people move their operations offshore to avoid detection, that that's an enhancement at sentencing. There was no moving anything offshore. The LIBOR desk was always in London. You know, that enhancement and several other enhancements are already baked into the base offense, and there can't be enhancement for that reason.

Your Honor, you heard all about this case and Matt Connolly's role, three or four e-mails.

THE COURT: Can we limit right now to the objections to the PSR? Because I want to rule on those. And then I will give you an opportunity to argue the other stuff on behalf of your client.

MR. BREEN: Just a final point then on loss amount.

THE COURT: Thank you.

MR. BREEN: The jury acquitted on the Parietti-related accounts.

THE COURT: Yes, it did. Indeed it did.

MR. BREEN: And that was very significant.

THE COURT: It was to me.

MR. BREEN: He had a side agreement. You know, the government is making an appeal to try to aggregate the Court

about Mr. Connolly. They're taking a position that's not -- on all these issues -- that's inconsistent with Mr. Parietti's and Mr. Curtler's positions, and they shouldn't be allowed to do that. They told Judge Engelmayer that they wouldn't, but they're doing it anyway. Thank you.

THE COURT: OK.

Mr. Levine, are you arguing for Mr. Black?

MR. LEVINE: Yes, your Honor, thank you.

With respect to our objections to the guidelines, we have, as you know from our papers, several primary objections:

First, the loss calculation. The loss calculation, we believe that the government -- the intended loss, I should say -- should be disregarded entirely because it is purely speculative and without basis.

We start first with the government's main witness, Mr. Curtler, who said at sentencing, in his submission, that the methodology was "absurd" and ignored -- I'm summarizing -- the realities of the market. If Mr. Curtler, as he has been, is to be credited, he should be credited here as well because in this matter he is entirely right that this methodology bears no relationship to any kind of reasonable methodology that could achieve a number that's reasonable.

Now always in complex cases, complex financial cases, you have to make an analyses which involve all kinds of sophisticated means of looking at data, and estimating, and

making the best judgment you can make. Protection cannot be the enemy of good. But here, your Honor, you don't have it. What you have is a methodology that literally counts only a counterparty's losses and not their wins. So, I think what you end up having is not only are you disregarding the hedging but you're also disregarding the realities of that counterparty over these days.

We think that this methodology is so flawed that it really has no providence at all, and I think we're prepared certainly to present on that extensively and go through all of the reasons -- I put them in our brief -- but let me just talk about another piece of it from this chart. Because what the chart says, your Honor, if you look at it, is that after ten years and dozens of banks paying money, and lots of banks doing whatever the government told them to do, and all of the analysis, after all of this and this trillion dollar scandal that they talked about, their best estimate is $4 million on the intended loss on the whole thing. But, as the Court knows, the intended loss calculation doesn't work that way; it has to be intended loss of this man. And if you take their chart and you just break it down, what you find out, your Honor, is that the portion -- there are 16 instances --

THE COURT: I've done the math.

MR. LEVINE: I know you have. I have a chart I can show to you if you want, but I don't think it was necessary

because I knew you had done it.

What it shows is the $166,000. So, we stand here today talking about intended loss, and I'm going to say so it's clear four the record, the intended loss calculation here is literally absurd, so as far as I'm concerned I am now through the looking glass. But even in Wonderland.

THE COURT: Got it. You thought you were there for a long time, Mr. Levine.

MR. LEVINE: Yes. But let's talk about the internal logic of what they've done. 16 instances. And if you notice, Judge, on their chart, as I know you've seen, there are these dashes sometimes.

THE COURT: I assume that means no intended loss.

MR. LEVINE: Yes.

THE COURT: That's what I assume that means.

MR. LEVINE: I take it that way. And while we can't know exactly how they did this, based on our efforts I'll tell you that's what it means.

What is interesting for Mr. Black -- since we're talking about intended loss -- of the 16 instances, four of them, 25 percent have no loss. OK? So if we cherrypick in -- they've cherrypicked the ripest cherry possible. But even if you were going to give them their rate, they have a 25 percent miss rate after ten years. So 25 percent of them, including exhibits they presented at trial, they cannot show even now

that there was any intention to create any loss.

So, this case is now about $166,000, and 25 percent rate is zero. OK. Well, what happens if one looks at the counterparties that are the losses that are represented and just says over the 16 days that they say Mr. Black should be held accountable, what happens if you just take their gains or losses for those 16 days and net them, just the counterparty? We've done just the counterparties who we believe these losses. The number drops to 80,000.

Now, they claim that you should assume a one basis point adjustment which translates to an eighth of a basis point. That's wrong, because again Mr. Curtler didn't testify to that. He said maybe a half, and there is a question of what happens after the financial crisis. I will footnote financial crisis for a second because let's forget about that for a second. And about 125 or so of these are before the crisis. So, it's half a basis point. Now the 80 is somewhere around $40,000.

So, if we're going to take this seriously -- and I don't think you should because I think this is madness -- but that's fine. If you're going to take them seriously, the intended loss on this chart should be at the most 40 grand. It's still more than it should be, but it's $40,000.

Frankly, if you add up all the gains and losses of all the counterparties on Gavin's days, not just the counterparties

who papered a loss, it gets down to about $25,000, and if you cut that in half it's $12,000.

So, my point to you, your Honor, is you have something that is flawed. But even on the "this is the best they can do" model, what it reflects, I think, is something very profound, that even under the government's best view of this case, after the many miles we've walked together on this, we're talking about a case that's between zero and $166,000; and I without any big math, just looking at what they've done, have it at, to be kind, 40 or less. Now, that means that were this Court to adopt any of this, the loss amount should be less than in my view $40,000. So, we object entirely.

There is also, your Honor -- and life is short, but there is an affidavit here.

THE COURT: You have all the time you want.

MR. LEVINE: There is an affidavit here, your Honor, from Special Agent McGillicuddy. Well, that's testimonial. We received no information, no data where this has been provided. It's testimonial, and you've ruled on that. Can I have the 3500? They can give it to me right now.

THE COURT: Is there 3500 in connection with Agent McGillicuddy's affidavit?

MR. KOENIG: Not that I know of.

THE COURT: OK, let's keep going.

MR. LEVINE: But my point, your Honor, is I don't

think this affidavit was written without all kinds of calculations and graphs, so I think Mr. Koenig memory or knowledge might be limited, but on that basis alone you can strike the whole thing. But if you keep it -- if you keep it -- we're talking about 40 grand or less -- I actually think it's even less than that; I think it's about 12 -- so it actual -- so, actually the enhancement that's being applied by the 18 points does not count at all, and it should be a much, much lower enhancement.

THE COURT: Well, if you were right, and if it were $12,000, the enhancement would be two points?

MR. LEVINE: Yes. Yes.

THE COURT: If it were 40,000, it would be either four or six points.

MR. LEVINE: And I will say that one thing that's very interesting about this is you then get to -- so basically if that's right -- and that's their best estimate, and I don't think I've done anything here than some math and basically apply the testimony -- I think that is very consistent with the instinct of probation, which looked at these numbers and fairly said, look, this is not for us given the complexity, but just looking at this we think we're over here and nowhere over here. So, I think even if you give the government whatever it's due, we start there.

You also note, your Honor, that in one part of the

affidavit, but there was some estimate of a market impact of $500 million. There is no calculation for that.

THE COURT: Trust me, Mr. Levine, that is not going to factor into anything I do here today.

MR. LEVINE: So then we get to the last piece of this loss, which is there are now apparently victims that we've never known about before -- which is my second objection, which is about the victims enhancement. As the Court is aware, the victims enhancement applies only for actual loss. There is no showing of actual loss in this case. It is conceded that there is no actual loss, so the victims enhancement does not apply at all.

THE COURT: And the section of the guidelines that so states is? I'm going to make you sing for your supper, Mr. Levine.

MR. LEVINE: Just give me one second, your Honor. I believe it's 2B1.1. And it is also recognized in this Circuit by a case called Skys, 637 F.3d 146.

THE COURT: Can we find it?

MR. LEVINE: Sure. 2B1.1(b)(2)(A)(i) and comment 1.

THE COURT: Which says, "Victim means any person who sustained any part of the actual loss determined under the subsection (b)(1) or any individual who sustained bodily injury as a result of the offense."

MR. LEVINE: So we would argue -- and the comment,

your Honor --

THE COURT: So, it's your position that because the government admits it can't prove actual loss and has instead relied on intended loss, that the victim enhancement has to drop out because victims are only people who suffer actual loss.

MR. LEVINE: Correct. That's correct.

THE COURT: And your Second Circuit citation for that is?

MR. LEVINE: It is the Skys case. It is 637 F.3d 146. The pin cite is 153 to 154. I would also command to the Court's attention -- which I know the Court has already seen -- we covered this in our brief, on page 15 and 16 of our guidelines brief.

So, I think the victims should be out from that alone, however, I then took a look at what Special Agent McGillicuddy says the victims are. Now, I know that the government put a website out that requested victim impact statements by October 1. We have been provided no statements; I assume that there are no such statements.

THE COURT: Are there any victim impact statements?

MR. KOENIG: Not that I am aware of.

THE COURT: Thank you.

MR. LEVINE: And, your Honor, I don't know whether or not the government had the opportunity to speak to these

purported victims that we've never heard of before. Obviously, if they did and they told them that they don't want to be victims, that would be something that would be useful to know right now, but I don't know if there is any contact with these folks at all. I'm curious.

I note that of these victims at least four of them are LIBOR panel members on at least some LIBOR panel, including Bank of Nova Scotia, which not only was a panel member, a bank that actually our expert witness worked at and was prepared to testify that there is no victim there. So, I don't know what the good faith basis is -- even if there was actual loss -- for putting up any of these folks.

I would also note that of three of the victims that are European banks -- Union Credit, ING, Stenzka -- I'm sure I pronounced that incorrectly -- they were members of the Euribor panel. So, again we have --

THE COURT: Everybody was in the game.

MR. LEVINE: Right. So, your Honor, I find it to be troubling that we're at sentencing, and in an affidavit that wasn't even provided to probation -- even though this calculation must have been done before Mr. Parietti and Mr. Curtler's sentencings -- why we're now seeing new victims and seeing folks that on their face don't really seem to be consistent with the letter or the spirit of the intended loss guideline, and therefore I think that they are not an

appropriate basis to issue the victims enhancement, but they are an appropriate basis I think for this Court to again look at the methodology that the government has arrived at to suggest a sentence and for you to arrive at that again undermines the pillars of what the loss could or couldn't be or who was harmed here.

I'm not rearguing what is not to be argued. I'm just saying for the purpose of assessing the loss today and the victims, these guys ain't it, and so I would ask that the victims enhancement not apply.

And I will tell you, your Honor, for some of these victims -- for example, they put in Standard Charter and Merrill as one of the victims. What is really interesting is if you actually take the chart, if you actually take the time and you look at the few trades that Standard Charter was involved in, there are four days in which they have some trade position of the 16 of my client's, they have them netted as I think a $400 loss. Because if you notice in several of these the loss on the big day is $400, $1500, very small. We just looked. What was Standard Charter's experience on the days that they said Mr. Black did something that caused a loss? Just those four days. It turns out if you net them they made $2700; they didn't lose $400. And frankly if you do this with some of these other victims like Merrill -- which is also attributed to a day that they want to talk about my client, an

actual loss -- you find out that the numbers just by looking at that customer and the days they've caught in total go way down.

So, again, my concern here is that not only are they wrong on the law but they're presenting facts in a way which do not achieve any ability to make even a reasonable estimate of loss or victimhood. So, I think that those all should be disregarded. And I'm happy to show you the charts if you'd like.

I think we then get to the third enhancement to which we object, which is sophisticated means. Here there are a couple of elements. First is whether there has been a concealment. The evidence in this trial, as this Court has pointed out -- one thing we didn't have in this trial was concealment; everything was out in the open. There was never a dispute of what happened in terms of the conversations. There is a dispute as to characterization but nothing was concealed. So, that doesn't apply.

And then we get to the one that I find the most sort of ironic, which is that my client -- who has virtually no experience in the United States, who was sitting on the desk in London trading LIBOR, which is literally the London market rate -- somehow is going to be additionally penalized because he somehow took this outside the United States. Plainly he did not do that. He plainly had no intention of concealing something like we see with someone who moves an investment

scheme offshore to avoid authorities. So, you see to me the application of that here leads to an absurd result in the sense that it's a London metric, a London trader, a London desk. It's not even U.S. dollar cash market; it's the London market for U.S. cash.

So, while that's not an argument about all the jurisdictional issues -- we've never contested that -- it's just not a reasonable thing to do to apply that standard. It's inconsistent with good sense and the realities. So I don't think it's applicable.

The final specific objection we have is the abuse of trust enhancement. The abuse of trust enhancement, as my colleague has said, simply doesn't apply, and it doesn't apply because that enhancement is designed to penalize conduct that involves fiduciary duties among the people and counterparties where a person has broken their trust.

There is no dispute in this case that every transaction was arms length. We presented, as you've seen -- I have showed it more than probably you care to see -- the contract is the master agreement, which disclaims reliance, fiduciary duty and all of those things. I think the law is quite clear that you need to have an abuse of trust. None of the witnesses we've heard, no one has testified that that's an abuse of trust here.

Further, if you wanted to even overlook that fatal

defect, then you have to ask, well, is this the kind of discretionary activity in which you might still want to apply abuse of trust. The answer is for Mr. Black he did not have discretion. We all agree he had no supervisory role, he had no authority over these. He didn't even have access to the computer to submit these things. His conduct is entirely based on what communications he had with those folks. There is no discretion. So the abuse of trust element is getting at those kinds of relationships. And, obviously, given that this conduct was throughout not only this bank at Deutsche, but as the government says in their briefs repeatedly all of these other banks, the notion that for this purpose that Mr. Black by following the instructions of his seniors doesn't dismiss the problem that we have, but it does say that that's not an abuse of trust. And again it's another guideline calculation which the government offered no real justification for. Probation put it in because they said this is their position. I will say the probation department footnoted every single one of their enhancements and recalculated each time, and I will say for the record I am very grateful for them for that, because I think they really tried to --

THE COURT: Mr. Kim is an extraordinary officer in cases like this.

MR. LEVINE: Yes. And I think that he took it not only very seriously, but he gave the Court a report.

So, I don't know why the government is pushing for these enhancements. They just don't apply. This is not a matter of debate. And obviously under the guidelines, though we submitted a second brief on guidelines, while they're significant, we don't think they are the main story here.

THE COURT: Oh, you are so correct about that.

MR. LEVINE: But again, where we are in a position where we see things that are clear errors of law we are obliged to point them out to this Court.

So, if you apply all those objections, then we think exactly what we said in our brief, which is the appropriate guideline calculation here is level 7, which yields a zone A sentencing range of zero to six.

Now I will talk later about the factors and things like the Court is more interested in, but the wisdom of the probation report is that whichever way you want to look at it from their perspective we come out the same place, but I do think for purposes of the order, and Rule 32 and the rules, that these enhancements are not established. And certainly a loss in victimhood we think cannot be applied. It certainly cannot be applied without a thorough Fatico hearing, which I think would be a thorough waste of the Court's time in light of the record and in light of what the government's position is. So, we would suggest those enhancements should all be struck.

Now, I know the Court is aware -- and Mr. Kim

documented this meticulously -- we made a series of other objections to the report. You know, many of those things are matters that -- and Mr. Kim actually accepted many of our objections and made modifications, including, for example, that Bank of America is not a victim. So, when they say Merrill is a victim and, yeah, it was premerger, but the one victim is out who has the successor right to the other victim that they're now asserting, it just sort of gets a little silly. But what I would say to you is we would stand on the objections that are in our letter. I don't think ultimately because they're factual matters of which is quite familiar -- I'm happy to go through them, but they really are objecting to the language in various parts of the description of conduct to conform with what we think the evidence showed, but I don't know that the Court is necessarily going to quarrel with any of those. You may not agree with our characterizations, but that's what they are. So, I am happy to go through them. We do stand on them as a matter of law. So again I would ask you to properly calculate Mr. Black's guidelines as level 7 and zone A. Thank you, your Honor.

MR. BREEN: Just for completeness before the government goes.

THE COURT: Yes, Mr. Breen.

MR. BREEN: If we applied the methodology that Mr. Levine set forth -- which we think is the applicable

methodology -- with the six entries on Exhibit 1A that deal with Matt Connolly they add up to $47,000.

THE COURT: I know.

MR. BREEN: With the methodology it's less than $3,000, and it puts it at a level below $6500 where there is no enhancement.

THE COURT: And I think, am I correct that Agent McGillicuddy's chart does not include Count Three, the Count Three communication?

MR. KOENIG: That's correct.

MR. BREEN: And the rest that had to do with Mr. Parietti, it's our position --

THE COURT: Oh, well, we will talk about Mr. Parietti. Don't worry, I have plenty to say about Mr. Parietti.

MR. BREEN: Thank you.

MR. LEVINE: So, your Honor, I haven't gone through today all the details, but our brief goes through systematically all the reasons the loss amount makes no sense. Thank you very much. I appreciate it.

THE COURT: Mr. Koenig.

MR. KOENIG: Thank you, your Honor. I would like to address a few points.

THE COURT: Just address the objections to the presentence report. Don't address any other points. Address the objections to the presentence report.

MR. KOENIG: OK. Well, on the loss amount they have a big section in their brief about how the 2015 amendment made it so you can only look as what Gavin Black did himself, or what Matt Connolly did himself, and that is simply not the law in this Circuit. The 2015 amendment didn't change the law in this Circuit. In fact, the 2015 amendment adopted the law of this Circuit.

And, importantly, I think it's important to point out that the amendment did not change Section 1B1.3, which says that your guideline calculation is made based on your acts and those of your coconspirators. And the Second Circuit has recognized that, and so I don't think you can just pick out the ones where a defendant is listed as the one who is the requester.

As far as the Skys case goes --

THE COURT: You know, "Without any determined amount of actual loss to financial institutions, the District Court inappropriately included the institutions as victims under Section 2B1.1(b)(2)." That's the Second Circuit. I'm kind of bound by what they say.

MR. KOENIG: Well, to the extent that they were arguing that because we used intended loss instead of actual loss, I don't think the case stands for the proposition that you can't also look at actual victims.

THE COURT: Yes, but you said to me -- and I believe

you -- that you can't calculate actual loss. It's been repeatedly said in this courtroom -- you weren't here -- that you can't calculate actual loss. So, OK, if the government is now saying but we can calculate actual loss as to Merrill Lynch, I don't buy it. OK? I don't believe it. You can't talk out of both sides of your mouth.

MR. KOENIG: And I don't think we are talking out of both sides of our mouth.

THE COURT: Good.

MR. KOENIG: When we are talking about restitution, for example --

THE COURT: Restitution is not applicable in this case. Excuse me while I go to Mr. Parietti's sentencing minutes. Restitution is not applicable in this case.

MR. KOENIG: I understand that, and that is -- I raised it because that's the context in which we made that argument.

Let's just take the example of when someone gets their car stolen. Right? Your car is stolen, you're still the victim, you don't get restitution in the amount that you're insured for, but the person who steals the car is still tagged with the intended loss of the value of the car.

THE COURT: The District Court -- my friend Judge Pauley, an absolutely brilliant judge in cases like this, rarely makes a mistake. "The District Court inappropriately

included the institutions as victim under Section 2B1.1(b)(2)." It's like really plain English. It's really plain English.

MR. KOENIG: But do you see my point though that you can have loss that's calculable on contracts, but the fact that they're hedged doesn't mean that that's still not a loss.

THE COURT: I'm sorry. Ms. Sipperly and Ms. Anderson said ad nauseum that you can't calculate the loss in this case. And if you can't, then I'm saying you can't calculate it for any one individual on any one trade. You can't calculate the loss. OK? Let's move on.

MR. KOENIG: All right. Another thing that I'd like to address is the abuse of trust. And they're talking about this as though it's just based on your counterparty and arms length transaction, and there has to be --

THE COURT: No, they had an argument about Deutsche Bank.

MR. KOENIG: True. But the position of trust here was that, you know, the BBA and the marketplace put in them to do a fair and honest --

THE COURT: Excuse me. There is no evidence in this case -- if you want to have a Fatico hearing on this, I will be happy to. There is no evidence in this case that the BBA trusted anyone to do anything. You shied away from it.

MR. KOENIG: OK. Well, there still was trust --

THE COURT: For good reason.

MR. KOENIG: There still was trust placed in them by the marketplace generally, by their employer.

THE COURT: No, no, no, no. OK.

MR. KOENIG: It's not vis-a-vis the counterparty. The Barrett case we cited in our brief says you don't have to have a fiduciary relationship. I mean it's just common sense that when you are charged with submitting numbers to this very important financial benchmark there is an element of trust by the market. Whoever you want to say it is, they are entrusted to do it. And in every single case that we have sentenced so far, the abuse of trust enhancement has been given.

THE COURT: Well, I'm not every single judge. And let me just say one thing right off the bat -- and I will say it again in a few minutes -- the findings I made in cooperator cases with no challenge weren't findings at all; they were an empty exercise.

MR. KOENIG: Understood. Understood.

THE COURT: In this case the exercise has been anything but empty.

MR. KOENIG: I agree. I definitely agree.

Well, you know, I think for the rest of it we can just rest on our papers; that's pretty much what we have.

THE COURT: Your papers are fairly comprehensive.

MR. KOENIG: Yes.

THE COURT: OK. I want to take a five minute break,

because I need a five minute break, and I will be right back.

(Recess)

THE COURT: OK. I've already done this, but I had intended to begin this part of the sentencing with a tender of tremendous thanks to probation officer Johnny Kim. Mr. Levine gave me an opening.

Officer Kim is the probation officer who is assigned to complex financial cases. He is assigned to those cases for a reason, both because he is willing to undertake an analysis of the complexities and because he candidly and conspicuously points out to judges where the holes might be, and he has done that in spades in connection with these presentence reports, and I simply could not be more grateful to him for all the hard work that he has done.

So, I am required to calculate the sentencing guidelines. Officer Kim has calculated the guidelines using most though not all of the government's suggested enhancements. He has carefully reviewed the defendants' challenges to the use of those enhancements and has in several cases advised me that I should make the final call because he cannot realistically advise on the question. And that is particularly true as to intended loss amount. I'm not sure can I do any better than he, but I will do my duty.

I wish to emphasize something that I said during the government's presentation. In each such instance Officer Kim

reminded the Court that I had made findings consistent with the government's position in connection with the sentencing of those cooperators whom I was permitted to sentence. That is of no moment to me today.

The cooperators did not challenge the government's use of enhancements or its calculation of loss amount except to note for the purposes of the record that loss amount could not be calculated -- a position with which I wholeheartedly agree. Therefore, nothing that was done in connection with the sentencing of the cooperators can be taken as an indication that I have previously considered and rejected the arguments that are being made by Messrs. Connolly and Black, or that I believe myself bound by "findings" made in connection with cooperators' sentencings. I am not so bound.

I begin in exactly the same place that Judge Rakoff began in his sentencing of the Rabobank defendants that went to trial: The guidelines, no matter how they are calculated, are so fundamentally flawed that they cannot be relied upon to come up with a sentence that is sufficient but not greater than necessary to effectuate the goals of the sentencing statute. That is true no matter how you calculate the intended loss amount. And because my faith in the guidelines is so attenuated in these sorts of cases, it is really absurd for me to have to go through this exercise.

The government and both defendants agree that the base

offense level for these convictions is 7. The government seeks a two point enhancement to the guidelines for each defendant for use of sophisticated means. And, specifically, as I read in the government's brief filed in connection with Mr. Connolly's sentencing -- portions of which were also deemed applicable to Mr. Black -- it relies on Section 2B1.1(b)(10)(B) of the guidelines, which provides that an enhancement is appropriate if "a substantial part of the fraudulent scheme was committed from outside the United States." Defendants have argued this morning that this subsection applies when extraterritorial conduct was undertaken for the purpose of concealing the offense, as when operations are moved offshore from the United States with conduct targeting residents of the United States.

Now, that caveat does not appear in the language of the statute, and if I may quote Justice Kagan's rather prescient remark from her confirmation hearing, we are all textualists now.

The argument propounded by Mr. Levine and Mr. Breen relies on the instruction in Section 6(c)(2) of Public Law 105-184 rather than on the text of the law itself, and the argument fails even if one considers the legislative history, because the legislative history directs the Sentencing Commission to "provide an additional appropriate sentencing enhancement if the offense involved a sophisticated means,

including but not limited to sophisticated concealment efforts such as perpetrating the offense from outside the United States." It could not be clearer from that language that sophisticated means enhancement is available for conduct other than sophisticated offshore concealment efforts. There were no such efforts in this case.

The crime was committed abroad. Nothing about that fact makes this a sophisticated crime. The London Interbank Rate is -- no surprise here -- set in London, not in the United States. All the submissions that were used in calculating the various LIBORs were made to an entity called the British Bankers Association which -- no surprise here -- is headquartered in London. Certainly, at Deutsche Bank the submissions were made from its submitting desk in its offices in London, by an individual who worked in London. So, the fact that efforts were made to manipulate LIBOR in London just doesn't make it sophisticated.

Yet there can be no question that "sophisticated means," as the dictionary and I understand that phrase, were used in the commission of the offense. The word "sophisticated" is defined in the dictionary as developed to a high degree of complexity. As far as the Sentencing Commission is concerned, the degree of complexity that's needed to qualify a crime as one using sophisticated means is actually quite low. When an offense is carried out repeatedly over a long period of

time, when the essence of the offense is lying -- in this case about a submitting bank's anticipating borrowing costs for a particular currency over a particular tenor -- and when a coordination is required to carry the scheme out, courts in this Circuit and elsewhere have readily applied the sophisticated means enhancement -- not the one cited by the government and Mr. Kim but the one in Section 2B1.1(b)(10)(C). The offense otherwise involved sophisticated means and the defendant intentionally engaged in or caused the conduct constituting sophisticated means.

Even those factors are the least of the sophistication inherent in this particular crime. The setting of LIBOR fixes was an inherently sophisticated exercise. It involved the evaluation by highly educated individuals at 16 different submitting banks of masses of financial, political and economic information and trends, the distillation of that information into an estimate of each submitting bank's borrowing cost in multiple currencies across multiple tenors five days a week every single week and the transmission of that information worldwide. At times during the relevant period the submissions also involved evaluating rather strange requests made by the Bank of England, which were addressed to the submitting bank in an effort -- whether misguided or not, I cannot say -- to stabilize a crumbling worldwide financial market. The setting of LIBOR is an intrinsically sophisticated exercise, therefore

any effort to manipulate LIBOR by introducing forbidden factors into a submitting bank's submission qualifies in my book as using sophisticated means to commit the crime -- far more sophisticated than if they had been running a telemarketing scam from Canada. The two point enhancement applies.

The government seeks the government seeks a two point enhancement as to both defendants for abuse of trust. The enhancement is most emphatically denied.

Abuse of trust, as I understand the term, means putting one over on someone to whom you owe some sort of special duty, if not always a fiduciary duty, then at least some duty recognized at law some enhanced duty. The defendants owed no special duty whatever to Deutsche Bank's trading counterparties. They were in the antithesis of a relationship of trust with those counterparties, and the very terms of their arrangement, as set forth in the ISDA agreement among trading institutions makes that crystal clear. Caveat emptor says that agreement -- let the trader beware. And traders are indeed distrustful, hence the hedging of bets on all sides.

And while defendants may have owed Deutsche Bank a fiduciary duty of acting in their employer's best interest, they can hardly have been said to have abused that trust. Defendants didn't put anything over on Deutsche Bank. What was going on was no secret, and was -- from all the evidence I have seen and heard -- encouraged, if not orchestrated, by senior

officials at the bank for the benefit of the bank. You can't abuse the trust your employer places in you if your employer is fully aware of and actively encourages what you are doing because your employer believes that your actions will, if successful, enhance its interests. Neither Mr. Connolly nor Mr. Black advanced his own personal interest at the expense of Deutsche Bank. And before anyone suggests that Deutsche Bank was betrayed because it incurred untold millions of dollars in penalties and legal fees to clear up this mess, I reject the notion that this can or should be laid at the feet of Matt Connolly and Gavin Black. The very idea of Deutsche Bank as a victim in this scenario is absurd to me.

As further proof that the abuse of trust enhancement is not warranted, let us consider that Gavin Black continued to work at Deutsche Bank for seven years after the Wall Street Journal first published rumors about LIBOR manipulation and through five years of intensive investigation by the Paul Weiss law firm. Moreover, it appears he would have continued to be employed by Deutsche Bank but for the insistence of the New York State Department of Finance that he specifically be fired. If at any time during the course of a five year investigation that was costing it millions of dollars Deutsche Bank felt that Gavin Black had abused its trust, it would hardly have kept him on as an employee. Financial institutions are not in eleemosynary in nature. People who are caught abusing the

trust of the institution are cut loose at the earliest opportunity, and the institution does not need to wait for a command from the government to get rid of them.

The government also seeks three-point enhancement for Mr. Connolly on the ground that he acted as a manager and supervisor of the criminal activity. The basis for this request is that Mr. Connolly "set himself apart by explicitly directing his subordinate Mr. Parietti to make manipulation requests on behalf of Deutsche Bank's pool trading desk in New York."

Probation declined to apply the enhancement. I agree wholeheartedly with Officer Kim's assessment of the matter, albeit for somewhat different reasons.

I was unable to discharge myself of my opinion about Mr. Parietti at his sentencing. That's because Judge Engelmayer sentenced Mr. Parietti. He did so because the government failed to do what has been the practice in this district for longer than I have been on this bench -- it failed to notify both the judge who took Mr. Parietti's plea and the judge who heard the man testify so that they, judge to judge, could decide which judge was better positioned to sentence the cooperator.

Judge Engelmayer asked the government about this at Mr. Parietti's sentencing, because he was mystified that no such letter had been sent and that I was unaware that Mr.

Parietti was about to be sentenced -- which I was, totally and completely unaware.

Ms. Brown, I believe you have never been an assistant in this district; is that correct?

MS. BROWN: That is correct, your Honor.

THE COURT: Ms. Brown stood up and said she thought I was aware that Judge Engelmayer was going to sentence Mr. Parietti, and that the team misunderstood my level of understanding about what was going on, and that the government was not engaged in judge shopping. Ms. Sipperly and Ms. Anderson -- both veteran prosecutors who served as assistant United States Attorneys in this district for many years -- not Ms. Anderson -- Ms. Sipperly. I apologize. I apologize, Ms. Anderson -- sat silently and said nothing in response to Judge Engelmayer's question, which, by the way, which was "Why didn't you send Judge McMahon and me a letter?" Not "What was your understanding of Judge McMahon's state of mind?"

MS. SIPPERLY: I was sitting right next --

THE COURT: Sit down, Ms. Sipperly. My turn.

And so we come to the concept of quibbling. Quibbling is saying something that is less than a lie but not quite the truth. It is lying by evasion. It's a concept that would have been quite familiar to Mr. Parietti because he was a West Pointer, and quibbling is quite explicitly a violation of the

West Point Cadet's Honor Code in which a cadet promises not to lie, cheat or steal, or tolerate those who do -- something Mr. Parietti did repeatedly for many years.

In responding to Judge Engelmayer -- and I put this charitably -- the government at the very least quibbled. Or, if I may rephrase what I just said in language that's probably more familiar to federal prosecutors, the government in the person of Ms. Brown -- who knew nothing -- omitted to state something necessary to make her response to Judge Engelmayer's question not misleading. I wish I could say it was the first such instance of at the very list quibbling by the government during the course of this case, but the trial record reveals that it was not.

In my opinion, Mr. Parietti -- who, per Agent McGillicuddy's intended loss data was the most prolific requester of LIBOR manipulation in all of Deutsche Bank -- 41 of the 130 written requests totaling almost $650,000 of the government's calculation of intended loss from those requests -- vastly more -- vastly more than either of the defendants here -- was guilty of at least quibbling and quite possibly outright lying at several points during his testimony. The jurors were free to believe him or to disbelieve him, and on my reading of the verdict sheet they did not believe him. Mr. Connolly was acquitted an Counts Eight and Ten, both of which involved submission requests made by Mr. Parietti. He

was even acquitted on a count where the submission request was allegedly made by him. But he was acquitted in both instances where the submitting conduct was attributable to his so-called subordinate Mr. Parietti.

Mr. Connolly was not a manager or a supervisor of the LIBOR manipulation scheme. The evidence clearly showed that the scheme was run out of London, and Connolly had very little to do with LIBOR as part of his job. To my ears, after sitting on this case for three years, Matt Connolly was the person who had the least to do with the manipulation of LIBOR in all of Deutsche Bank -- certainly, of all the actors with which I became acquainted. The evidence does not support the government's contention that Mr. Connolly was by virtue of his nominal supervision of the trading desk at Deutsche Bank in a position to stop LIBOR manipulation that was taking place out of the London office of Deutsche Bank where he did not work and did not supervise anyone. Many persons who were in a position to stop what was going on -- some of whom were deeply involved in the activity while at Deutsche Bank, others who tolerated it -- were not indicted. The evidence from Mr. Parietti, I believe, was to the effect that senior management at the bank directed this activity. This part of his testimony I believe. I don't believe he did what he did because Matt Connolly told him to -- and neither did the jury -- but I do believe his testimony that senior management at the bank directed this

activity. And Matt Connolly was not part of the senior management at Deutsche Bank.

He was not unaware of what was going on. He was aware as far back as 2005 of what was going on. I can cite Government Exhibit 1-023. And he did participate in the conspiracy to a very limited extent of making a total of six written submissions, but he was anything but a manager or a supervisor.

I note that the government did not argue for such an enhancement for Michael Curtler, who actually was a manager or supervisor of the scheme, and who had the undoubted power to stop it just by saying no and refusing to entertain the requests of his coworkers. Officer Kim rightly picked up on this discrepancy in recommending that I not apply this enhancement. I will be guided by his advice. Mr. Connolly will be punished for his conduct and his conduct alone; he will not be punished instead of punishing Mr. Parietti or Mr. Curtler, and he will not be punished for their conduct; and he will not be punished for going to trial, which is what the government seeks by not enhancing the guideline of a cooperator who was manifestly was a manager but trying to enhance the guidelines of a noncooperator who was not.

Now we come to the most ridiculous part of this exercise which was the calculation of the intended loss amount.

In the real world, which is to say, the pre-guidelines

world, the judges would simply recognize what was obvious: It was the intent of the defendants and their coconspirators it make all the money they possibly could from trading, and that money necessarily had to be made at the expense of the counterparties to their trade. And while the actual loss in this case cannot possibly be calculated -- it is impossible to calculate -- the government concedes as much -- the effort to swing LIBOR fix in a particular favorable direction went on for years, and there were billions of dollars in trades during that period, and it is inevitable that Deutsche Bank benefited on some of those trades as a result of tainted fixes submitted by its traders that swung LIBOR in a particular direction for a particular tenor on a particular day. I can't prove which ones, but I can't help but think of this whole endeavor as some financial services version of the so-called infinite monkey theorem: Hit keys at random long enough and the monkey will eventually recreate the works of Shakespeare.

That is the essence of the LIBOR scheme. It all came out in the wash, because the other submitting banks were doing exactly the same thing to try to benefit their trading positions, including banks that were counterparties to Deutche Bank, and everyone, including people who did not work for the submitter banks, hedged their bets because nobody trusted anybody. And since many of the other submitting banks were doing the same thing that Deutsche Bank was doing -- on some

occasions shading a submission -- Deutsche Bank's efforts on behalf of its traders had to have been canceled out in many instances by the efforts of other banks. But that does not mean that there was no intended loss.

I agree with the government's contention that this was not a victimless crime. Defendants hoped to benefit Deutche Bank's trades to the detriment of its counterparties. The swaps market is indeed a zero sum market, and if the coconspirators were not trying to win at trades vis a vis counterparties, there would have been no reason for the cash traders to communicate their desires to the LIBOR submitters. Traders do things that they think will in the end make them money. They do not waste their time doing things they don't believe will make them money.

So, while each trade was worth just fractions of pennies, and while it is the net value of the trader's book, not any individual trade, that is ultimately relevant to the bank's and the trader's bottom line, the intended loss -- the amount of the intended loss -- was not zero.

A word needs to be said about the trim. The scheme charged has always struck me as particularly unlikely to achieve tremendous success -- except in the infinite monkey theorem variety -- precisely because the participants had no control over its likelihood of success. The BBA's formula for calculating LIBOR for a particular currency at a particular

tenor -- the trim, the averaging of the eight middle submissions out of the 16 total submissions -- was designed to eliminate or minimize the ability of any one submitting bank to manipulate the fix. There was simply no way for these defendants and their fellow Deutsche Bank employees to guarantee that a particular day's submission would move the fix in a particular direction.

But that didn't stop the submitting banks -- including Deutsche Bank -- from trying to move the fix. The reason they tried to move the fix was to win at trades. It was a long shot but, who knows, if everything lined up just right it just might help. I therefore reject the notion that the existence of the trim negates the possibility that the defendants intended any loss.

The defense argues that the government has not met its burden to prove the amount of intended loss. And the defense is correct in the respect that because of the way the market works, neither the government nor this Court can make an accurate assessment of the amount that's properly attributable to the defendants' scheme. The government candidly admits that it cannot calculate actual loss; it does not have the information that would be necessary to make such a calculation, which would involve knowing things like the overall exposure of the counterparty to LIBOR on any particular day on which Deutsche's Bank's submission of a fix actually ended up moving

LIBOR in a particular direction. The government might have to take into account counterparty hedging in order to calculate actual loss, although it is correct that the defendants don't get to benefit from those hedges, even though their knowledge that everyone was hedging -- just as they were hedging -- is part of any trader's daily calculus. The government would have to take into account any manipulation of LIBOR by other banks on the same day at the same tenor because only Deutsche Bank's manipulation would matter for these defendants, and as government acknowledged, this practice was widespread. Indeed, at certain times, such as during the height of the 2008 financial crisis, submissions were actually being manipulated at the request of the Bank of England.

So the government has come up with a proxy formula for calculating intended loss. The government's methodology can be attacked as inaccurate for all the reasons proffered by the defendants. And as will be seen, I actually take issue with some of what the government has done, but the government does not need to prove intended loss with mathematical precision, and the mere fact that it does not do so does not zero out intended loss.

Now, the usual thing that happens in cases like this is that the Court accepts the government's calculation of intended loss amount all the while bemoaning its inadequacy -- as Judge Rakoff did at the Rabobank sentencing -- and then

proceeds to ignore the resulting guideline, which is always astronomically high, and sentences on some far more rational basis. It's a wonder to me that district judges should be put in this position, but we are.

I have looked at the government's calculation. I have tried to address some things in it that I found troubling. In so doing I took into account the November 2015 amendment to the guideline. Mr. Koenig is correct, contrary to the defendants' argument, Section 2B1.1, comment note 3 (A)(ii) did not work a radical change to the intended loss guidelines in the context of conspiracies or limit the intended loss calculation to losses related to the conduct of a particular defendant. I don't deny that the conduct attributable to a particular defendant is -- and for me always is -- an important factor in the sentence that is imposed, but the amendment in 2015 did not make it impossible to consider the losses of coconspirators or the actions of coconspirators in doing an intended loss calculation.

The amendment clarified that the sentencing court had to make a subjective inquiry into the amount of loss intended by the defendant -- whether through his own acts or the acts of his coconspirators -- rather than relying on some sort of objective test, which had apparently been the law in some circuits.

That the amendment of Section 2B1.1 did nothing more

than what I just said is underscored by the fact that at the very same time the Commission also amended Section 1B1.3 of the guidelines concerning jointly undertaken criminal activity. That amendment stated that a defendant could be held accountable for the conduct of others in a jointly undertaken criminal enterprise if the conduct fell within the scope of the enterprise, the conduct of others was in furtherance of that criminal activity, and the conduct of others was reasonably foreseeable to the defendant. The Commission specifically noted this amendment was "not intended as a substantive change in policy." The amendment to Section 2B must be read in the context of this statement made simultaneously by the Commission.

Finally, I found no Second Circuit law suggesting that anything changed after November of 2015, which itself suggests that the 2015 amendments were not as portentous as the defendants insist they were. I know that the Eleventh Circuit has at least on one occasion resisted the siren call of limiting intended loss in connection with jointly undertaken criminal activity to the portion of loss that was caused by the defendant's own actions rather than those of his coconspirators. That was in United States v. Leyva, 752 Fed. App'x 825, a 2018 case from the Eleventh Circuit.

So I cannot agree with the defense that the government is not allowed to include the activities of other traders who

asked Messrs. King and Curtler to move Deutche Bank's submissions under the Gavin Black intended loss umbrella or the Matt Connolly intended loss umbrella. All the testimony at trial was to the effect that everyone knew what was going on and everyone to a greater or lesser degree participated -- with many traders making occasional requests and with Mr. Parietti making the most by a wide margin, and not at the direction of Mr. Connolly. They were all in it together. Deutsche Bank coconspirators intended to benefit their collective trading positions to the detriment of their counterparties. Thus, it is entirely reasonable to hold these two defendants responsible for the collective intended loss, and there is no need to resort to some "they wanted to enhance the bonus pool" argument, as to which there is no evidence other than Mr. Parietti's statement, which appears to have been injected into his testimony by the government, and which I don't believe.

The government has identified 130 instances starting on February 21, 2005 and ending on March 17, 2010, in which Deutsche Bank traders in the U.S., London and on the Continent made written requests to the Deutsche Bank submitter to skew the USD fix, on dates in which Deutsche Bank's submission was one of the eight submissions that survived the trim. 16 of those written requests, with the government-estimated intended loss amount totaling $166,740.41, were made by Mr. Black; six with an intended loss amount of $47,036.39, per the

government's formula, were made by Mr. Connolly. 43 of the 130 requests occurred after Mr. Connolly left Deutsche Bank. He withdrew from the conspiracy, and they will not be factored into his intended loss amount. Additionally, two more which relate to four or five trades of Mr. Parietti's, relate to counts of acquittal, and I don't sentence people for conduct for which they were acquitted, even if it was part of the conspiracy, and those too must be backed out. All 130 will be factored into Mr. Black's intended loss amount because he at all relevant times worked at Deutsche Bank.

Now, there was testimony that requests were occasionally made orally, not by mail. The government has invented 74 oral requests, of which there are by definition no record -- they cannot be tied to specific dates, they cannot be tied to requesters, or to any certainty that Deutsche Bank was one of the eight submissions surviving the trim. And the government uses the average of all 130 written requests as a proxy for the amount by which these hypothetical requests led to an intended loss, which is itself problematic as the intended loss numbers assigned to the 130 written requests range from zero on four days attributable to Mr. Black to $261,000, and including the two or three very large intended loss days in the calculation with a whole lot of smaller numbers wildly inflates the bottom line.

I am unconvinced by the government's presentation.

The government is required to prove intended loss by evidence that is reliable and specific, and while it need not be proved with precision, I cannot use the kind of hypothetical numbers relating to hypothetical conversations as a basis on which to sentence these two men. Moreover, lacking dates, I cannot account for Mr. Connolly's departure from the bank's employ. And as he did not work in London, and there is no evidence that he or anybody else ever made a request by telephone, I can't attribute any of the verbal requests to Mr. Connolly. I thus decline to rely on any of the 74 verbal requests in calculating intended loss for either defendant.

Mr. Black argues that the government cannot even reliably calculate the intended loss to his counterparties because it cannot reliably identify his trades let alone his net position. To support his argument, he relies on the government's admission that Deutsche Bank's book-to-trader mapping and the corresponding net notional analyses were so imperfect that the government could not rely on them at trial.

The government did indeed admit that these analyses "may well be unreasonable and inadmissible," and it is tempting to hoist the government on its own petard. However, it is the case that intended loss calculation need not rely on evidence that would have been admissible at trial, and that the defendant cannot avoid an intended loss calculation that relies on the best data available -- even if the data is incomplete.

I equally reject the defense argument that the defendants could have intended no loss because even if an alleged counterparty victim lost a small amount of money on a particular swap as a result of an alleged request, it likely earned offsetting profits on other swaps transactions. Defendants are not entitled to benefit from hedges that counterparties fortuitously happened to have. Perhaps in an actual loss scenario they might get a credit, but certainly not in an intended loss scenario.

So, I will calculate intended loss by applying the government's methodology as set out at pages 15-16 of its sentencing memorandum and in Special Agent McGillicuddy's affirmation to the 130 written requests in the case of Mr. Black and to fewer than 87 of the 130 requests in Mr. Connolly's case, because I have to back out the counts of acquittal. I acknowledge that the government's formula is far from perfect. It is a Rube Goldberg sort of algorithm. But the guidelines do not require accuracy; they require that there be a reason for the algorithm. And the government has come up with a methodology that works for me, given my conclusion that some loss was intended.

The government will no doubt protest that the Court's calculation understates the culpability of these defendants, especially Mr. Black. Indeed, the government argues vociferously that its $4.7 million estimate understates their

culpability. To which I say this on the subject of loss: After hearing all the evidence in this case, my best guess is that Mr. Black and Mr. Connolly, and the whole crew at Deutsche Bank, and at Bank of America, and Rabobank, and at Citibank, and everywhere else, were acting so much at cross purposes that if we could actually reconstruct the losses suffered in connection with trades done by all of the cash traders at submitting banks, they would end up canceling each other out, which means the ultimate actual loss from the scheme would be negligible if it existed at all.

This does not excuse or cancel out the misbehavior that was committed here. It does, however, suggest that the government's $4.7 million intended loss number for these two defendants -- and even the somewhat lower number that I have calculated -- is way out of line with any actual loss that may have been suffered by anyone.

The ten victim enhancement will not be imposed. United States v. Skys, the Second Circuit, made it perfectly clear that a victim for purposes of this enhancement must be someone who suffers actual loss. The government has attempted to prove actual loss for ten people. I am unconvinced that the government can prove actual loss for anyone in this case in any instance. I cannot and will not rely on those numbers. Furthermore, since I do not intend to issue a guideline sentence in this case, it would be a waste of time to have the

Fatico hearing to which Mr. Levine would undoubtedly be entitled if I were to do anything other than decide not to impose that particular enhancement.

Mr. Black's guidelines calculation is, therefore as follows: Base offense level 7, intended loss from the conspiracy totaling $2,613,214, which leads to a 16 point enhancement under the utterly ridiculous fraud guidelines chart at 2B1.1(i), a two point enhancement for sophisticated means, for a total offense level of 25. His Criminal History Category is I; guideline range 57 to 71 months, much of which is attributable to the fact that the fraud enhancement chart is heavily weighted toward increasing the number of enhancement points at the lower end -- a fact that has been criticized on more than one occasion by this and other courts and has always made me highly skeptical of the chart.

I note that the government's estimate of loss -- the government's estimate -- not Mr. Levine's estimate -- but the government's estimate of loss actually attributable to Mr. Black would not add 16 points but would add 12, because it would be under subsection G, and it's just above subsection F which tops out at 150,000, which would add ten points. This chart is just so ridiculous it's incomprehensible.

Probation recommends that Mr. Black serve a period of five months' incarceration followed by two years of supervised release, and that he pay a fine of $300,000.

I now turn to Mr. Connolly. The government has behaved throughout this prosecution as though Mr. Connolly and Mr. Black are in exactly same position. From where I sit they're not. For one thing, Mr. Connolly left Deutsche Bank in early 2008. Yet the government inexplicably assigns the exact same loss amount to him as to Mr. Black, who remained employed at Deutsche Bank for another seven years, including the last two years of the alleged scheme.

43 of the written requests on the government's chart occurred after Connolly left the bank, and so withdrew from the conspiracy as far as this Court is concerned. I will not include them in calculating his total intended loss, which deducts $1,128,803.03 from the intended loss amount that was applied to Mr. Black. And I am also deducting the amounts relating to Counts Eight and Ten, which are the counts of acquittal. So, the amount comes out to $1,411,733.73.

Mr. Connolly's total offense level is calculated as follows: Seven points for the base offense level, 14 point enhancement for the intended loss of $1.411 million. His much lesser intended loss amount doesn't give him much credit under the fraud chart, and even that is extraordinarily excessive. I want to do the same exercise for him that I just did for Mr. Black. $46,000 is attributable to requests made by him. That's a six point add, not a 14 point add. A two point enhancement for sophisticated means. Total offense level of

23, Criminal History Category I, guidelines 46 to 57 months.

Again, probation treating him in the same way as Mr. Black was treated recommends a five month sentence followed by two years supervised release and a $300,000 fine.

OK, you all have your exceptions.

Yes, I did. I said seven points for the base offense, 14 point enhancement for 2B1.1(b) for intended loss of $1.411 million, which is much in excess of the six point add-on for what he actually did. OK?

All right. So, now we've gone through that exercise, and I have told you that I don't intend to give a guideline sentence -- and I don't. So, I guess I'll hear the government on sentencing.

MR. KOENIG: Thank you, your Honor. I won't be long. In spite of what the Court said about the difficulty in estimating loss, what the defendants engaged in was a big deal -- it was a really big deal. They had privileged access to the very, very important financial benchmark, and they abused it. And this wasn't just slip some money out of the church collection plate. This was something where the harm went beyond Deutsche Bank and their counterparties. So, you know, were they the only ones to do it? No. But their conduct was significant and it cannot be ignored. It went on for years, and it went on over and over. So, a significant period of incarceration and a significant fine will send a message

that that kind of conduct will not be tolerated, and it also will change the calculus for anybody who is out there who thinks that maybe I should engage in a fraud.

THE COURT: How succinct.

MR. KOENIG: Thank you.

THE COURT: I thank the government.

Mr. Breen?

MR. BREEN: Your Honor, as the Court has recognized, the guideline calculation is wildly skewed.

THE COURT: Yes, whatever it is, I'm not applying it, so let's talk about your client.

MR. BREEN: OK. You saw the letters we submitted on behalf of Mr. Connolly. You know that he is a loving family person committed to his family, his children, his wife. He is the backbone of that close-knit family and his extended family as well, his sisters, his brothers, his nieces and nephews. He is a humble man and has shown that he is not a flashy Wall Street person; he is somebody who went and did his job until he left it. He is somebody whose family cares for him deeply and who need him around. I think that should count in your consideration.

In terms of the sentence here, the vast number of people who have been sentenced in the LIBOR cases have gotten very little or no time. And some of those people -- you know, the example of the person who received the most as somebody who

had -- the spider network guy, the book, had people at different banks, and they were moving rates by working together and colluding and doing all those things, you know, that's not really an example that has any relevance here.

Out of all the defendants in all the cases, we struggle to find anybody whose conduct was as narrow as Mr. Connolly's -- you know, people who were actively involved. I think to the extent that Mr. Parietti talked about Matt Connolly being his boss was unbelievable, I think, to the jury.

THE COURT: Well, you you've already heard what I think of it. And I read into the jury's acquittal on the Parietti counts that the jury didn't believe it either.

MR. BREEN: Because they didn't believe that, I mean what is there to believe about what Matt Connolly did? It's only his own e-mails, right?

THE COURT: Well, his own e-mails are his own e-mails, you know.

MR. BREEN: And the jury convicted him presumably on his own e-mails, but that's really it. The rest of the scheme should be viewed as acquitted conduct for that reason.

THE COURT: Well, no, come on, he was convicted of conspiracy.

MR. BREEN: Well, he was. Technically he was.

THE COURT: He was convicted of conspiracy.

MR. BREEN: But he wasn't convicted of anybody else's

conduct.

THE COURT: I agree with you that his participation in this conspiracy was -- as far as my reading of the evidence is concerned -- negligible, far smaller than that of anybody else at Deutsche Bank. And I've kind of scoured the Rabobank stuff, and it appears to be a lot less than anybody at Rabobank. I haven't kept track of what was going on in the London cases. I know some people got off, and I know some people got small sentences, and there is some guy who committed obstruction of justice and bribed people, and he got five and a half years apparently.

MR. BREEN: Right. Of course none of that -- and that was our review too.

THE COURT: And on the great scheme of things if he is like the worst person in the whole thing, Mr. Connolly is down here, I will grant you that. OK?

MR. BREEN: So, your Honor, we ask that he be sentenced appropriately, given that, and that he be sentenced to a period of nonincarceration and a modest fine. I think there is eight out of 24 of the defendants who received no time at all, nonincarceratory sentences. Granted, some of those were cooperators, we understand that, but, you know, cooperators who on that scale are at the highest level receiving no time. The government's request for a fine of $3 million is that's just hugely disproportional, and I think the

request for any time at all is disproportional. So, we ask for a nonincarceratory sentence and a modest fine.

THE COURT: Thank you, Mr. Breen.

Mr. Levine?

MR. LEVINE: May I speak from here, your Honor.

THE COURT: You always did.

MR. LEVINE: Thank you very much.

THE COURT: I think of that as your spot in my courtroom.

MR. LEVINE: Your Honor, the purpose of today is punishment. That's what we're here for. Mr. Black respects this country's legal process, he respects what is going to happen here today, and just as he has years ago since years ago when he agreed to come here and waive extradition --

THE COURT: Mr. Levine, you are going to have to move over there. Either speak up or use the microphone. Shout.

MR. LEVINE: What I was saying, your Honor, was that -- I will start again, to make sure you've heard it.

THE COURT: I heard it.

MR. LEVINE: OK. The point is that Mr. Black has subjected himself to the jurisdiction of this court and respects this process. I hope given the special health circumstances that Mr. Black is going through that the Court appreciates -- I'm sure you do -- that he has come today, not sought an adjournment, and done everything he could to be in

this court today.

We ask today for only one thing, and that is fair, proportionate and just punishment. And obviously the standard here is what punishment is sufficient but not greater than necessary to achieve the ends of sentencing. And our recommendation, the Court knows -- which we spent considerable time on, recognizing the seriousness and the nature of this case -- is that the appropriate sentence that is certainly sufficient would be to sentence Mr. Black to a term of supervised release, with a special condition potentially of home confinement. And as we outlined to the Court, we have made efforts to ensure that that home confinement can be served on the same terms as served in the United States, including electronic monitoring or any other kind of circumstance the Court deems appropriate to provide Mr. Black an equal opportunity to the same sentences that he would have if he was a United States resident.

How do we get there? Well, we start where I imagine the Court would like to start, the work of the probation department and Mr. Kim. And obviously there is a wide range here of available sentences, and after thoughtful consideration, professional consideration, you know, Mr. Kim and the probation department as a whole determined that this sentence should fall at the very low end of the range of sentences that are available, a short period of incarceration

in the United States followed by supervised release and substantial fine.

While we agree with probation in terms of where you situate the appropriate place to sentence in this case, we think they have that right, and we think it's based on obviously you have seen the factors included in their recommendation, which includes disparate impact, the conduct and looking at this, stepping become a little bit and looking at this whole picture.

And there is a meaningful difference obviously between what we're asking for and what probation recommends, because we are recommending if there is a form of confinement it should be in the United Kingdom where Mr. Black is from. I recognize there is hey difference between that and institutional confinement -- there is no question. What we think -- and I will talk about it a little today -- that when you factor in all that happened, the punishment that will be meted out by the court, and the other factors, including health factors and issues of non-U.S. resident being incarcerated, the other situations including the complete loss of Mr. Black's career, the public shaming that has occurred, and other factors, that that modest change -- and it is a modest change -- is fully and wholly justified here, because it still provides more than a sufficient sentence.

You know, I think, your Honor, that just starting out

with going through the factors, there is no dispute here that Mr. Black is a first-time offender. There is obviously no violence or public threat here. There is no history of any misconduct. In fact, the probation department notes -- and I will talk about the letters in a bit -- but you have other evidence that Mr. Black has otherwise lived a well-lived, law abiding, and in many respects very laudable life. We are not making any excuses today, but I'm simply asking that Mr. Black be sentenced -- as I know the Court will -- based as an entire human being and how he has behaved for the years he has been on this earth, and not just based on the verdict, which is the worst thing he has done.

There is clearly no question that Mr. Black is someone who can conform his conduct to the law, which is an important factor here. He has been on bail now for over three years. Those conditions -- which has been agreed by everyone -- and he has had no issues whatsoever. And that includes that fact that we've all adjudged he didn't even need to be supervised; he has traveled back and forth to the United States frequently in fact. He's been here every time. There is no issue about his conduct or any other reason that there is a concern about antisocial behavior, which obviously this Court has to consider in making a determination.

Similarly, the probation department clearly says it believes there is no risk of recidivism here; there is no

concern that he needs to be personally deterred.

You know, you have already commented on these things, so I'm not going to go through them all, but just looking at the case, we're not offering any excuses today. We gave you a view of this case but the jury spoke, and we certainly understand that.

As you said, Mr. Black behaved within a system of Deutsche Bank, but this conduct was not limited to him; it was obviously part of not only this bank but many, many banks. It was encouraged, it was not concealed. And also very importantly, although Mr. Black was in London, he of course was not only a submitter, but he had no ability to control the submissions, he had no ability to input the submissions; those decisions were made by those senior to him, and frankly his requests to be rejected.

So, I would say when you look at across the board, Mr. Black's conduct also falls -- you know, of all the people, of all the LIBOR gin joints in this particular case -- and there are dozens and dozens and scores of people that are involved, according to government -- Mr. Black is on the very, very low end, in fact in this case, the very, very bottom of that.

The task force has thought about offenders like this. The guideline comment from 2018, we respectfully submit that at least with respect to how we think about the loss -- and I'm

not challenging the court's ruling -- we think he really is of the type of offender, first time conduct, otherwise no reasons to believe he will reoffend, that should be the kind of person in which a term of nonincarceration should be seriously considered. I say nonincarceration. There is no doubt about punishment. Mr. Black has and will be punished here, punished very severely. The only question is how much is needed.

You commented on this a little, Judge, but I want to talk about one factor that I really think looms incredibly large here, and that is the requirements under 3553 to not impose sentences that have disparate effect.

Plainly for Deutsche Bank for this part nobody is suffering a sentence of imprisonment. The more senior folks, the decision makers, we have Mr. Curtler, he obviously has been sentenced to a nonincarceratory term; Mr. King, who is a decision maker, the recommendation notes Mr. King's role. It's not a question of imprisonment. He obviously has not been charged at all. He hasn't suffered any penalty whatsoever other than the fact that he had to come and testify. That's very significant because this is a case which is not common where the government cooperated down quite frankly.

THE COURT: You think it's not common? You should do more drug cases, Mr. Levine.

MR. LEVINE: Well, when I did drug cases, I didn't do that.

Mr. Parietti also -- who as the Court pointed out had a very robust -- under the government's analysis -- set of requests, he also is facing no time of incarceration. But that only begins to tell the disparate story.

As this Court has noted today, and as the government's own settlement with Deutsche Bank notes -- and frankly as the testimony notes -- this is not about just Mr. Black. He is a trader on the desk. You have the senior folks -- including senior folks that are listed on this loss -- Mr. Nichols, Mr. Clody, Mr. Jane, the entire Deutsche Bank organization -- that are absolutely responsible, I would argue much more culpable than Mr. Black.

I'm not making any excuse today for his conduct, but I'm saying let's look at the context. Those people, they're not thinking about prison, they're thinking about nothing. There is no sanction to them of a criminal nature at all. So, Mr. Black is already going to absorb an enormous amount of punishment that the people that one who think the government would find more culpable are walking away with nothing.

Which brings me to the chart we talked about before, the people that you've looked at for loss. There is a couple of observations I'd like to make, your Honor, because we also know that Deutsche Bank did a massive investigation. They fired lots of people -- not Mr. Black. He sat on the desk trading for years. But even if you look at their chart, your

Honor, the disparate impact is difficult to not consider. For example, on the chart we have Ms. Mackler and a man named Pasquele Fluant. They're not coconspirators. They're not on the government's list of coconspirators. But their losses are nonetheless attributed -- not only are they not charged, they're not even conspirators. And I note that Ms. Mackler has a loss of almost the identical amount as Mr. Black. OK, we're not talking about the culpability here, we're talking about relative punishment, no charge.

Mr. Rickman on the chart, he is a coconspirator, $363,000 of loss, not charged, will face no sanction. Mr. Nichols will face no sanction. Mr. Pastorella, he was actually someone who shared a trading book with Mr. Black. He is on this chart, again no sanction whatsoever.

So, I'm not here arguing, Judge, or asking do not punish Mr. Black. You should punish him today under our system and on this stage. But what I'm saying is basic fairness informs that the way that this is being done is that Mr. Black's culpability is taken into account. But none of these other folks who the government even says are how you get to this harm.

Now, of course our view is that because the different traders didn't know each other's net positions, it's hard to say Mr. Black knew anything that should be attributed by these other people, because he doesn't know what their position is,

so their requests don't necessarily affect him. But, fine, all I'm saying is none of these folks are going to get any punishment.

If you look at it, 65 percent of the chart is the cooperators. If you include Mr. King in the noncharged people, that's 36 percent of the charge. So, you are talking about Mr. Black has six percent of it. OK. If you're going to mete out punishment, I'm just saying it needs to be proportionate to that. Now that also does not take into account.

You have seen Rabo. I'm he happy to talk about Rabo. None of the people that went to trial are going to jail at all. Whether that's right or wrong, that's the fact. And those people were far more culpable; they were like Curtler and King; they were submitters with decision making authority and everything else.

Mr. Thompson who pled guilty, fought extradition up the wazoo, got 60 days in prison after all that, couldn't be tried with the Rabo folks; I don't think he is similarly situated. The other Rabo people, no jail time, no jail time at all.

THE COURT: Well, two of them because of the Kastigar problem.

MR. LEVINE: But the point is if you're looking at it relatively, I'm not here today to ask you not to punish Mr. Black; I'm just asking you for proportional punish.

Then we move on to the other issue which the Court has mentioned today: What about all of these other banks, Barclays, Citibank? All have these agreements, those agreements all reference numerous individuals -- depending on which agreements you look at, 40 to 100 names. Not one -- not traders, not senior executives, no one.

So, if I take Mr. Koenig's comments, you know, about what we need to do here, there is no sense in which the government's approach suggests that they believe that there is the need for all of this punishment for these two frankly base-level nonsupervisory folks that's going to somehow make things better. I don't think that general deterrence as we pointed out, and the DOJ said in our research, is achieved when people have an interaction with law enforcement. The actual punishment is not the key point. There is none of these people -- I will make a wager, Judge, that if we contacted -- if the government contacted all of the banks and said send us to this courtroom right now every single one of those scores of people that have not been prosecuted and asked them would you change places with Mr. Black and Mr. Connolly, I think they're going to say, oh, my God. I think the conduct has been deterred.

Similarly, the government has always tried to suggest that this is this very narrow piece of LIBOR conduct. They don't want to talk about low balling; they want to talk about

the Bank of England. They don't want to talk about the actual events during the crisis, because that leads to a massive inquiry about the things that really did cause an issue for LIBOR. OK, but you can't have it both ways. You can't make, as they do in their papers, these guys the face of that, when you recognize that even under their scenario this is not the big case. This is conduct that should not have happened based on the jury's verdict, but it is not the overall LIBOR story. And that story the government has fought to not tell. That's fine. We're still culpable based on the verdict, and we have to answer for it, but let us answer for what we actually did and not all of these other folks who the government decided not to prosecute for conduct which is much more complicated and more serious.

It is notable Mr. Black is not a man -- like a lot of people -- he didn't have a lot of jobs; he basically had this job. He sat on the desk for years. That career is completely gone. Effectively he will never work in the financial services industry again. It's going to be very difficult for him to work. He hasn't worked since 2015. That is a very heavy sanction for any person. It's not the end of it, but it is ironic that Deutsche Bank did a whole investigation -- which the government the Court has found had a hand in, and in their judgment, even with all the pressure they were under, of all the people they fired, including getting rid of Curtler and all

of these other guys, he is still sitting on his desk.

So, all I'm saying is in terms of relative culpability, if you credit what Deutsche did -- because the government sponsored it and they were going to put witnesses on about it -- then credit it. And their view is of all the people around here we're not going to fire him; we're going to give him a letter. But who are we punishing? And how are we punishing? Again I'm not making excuses; I'm talking about relative culpability.

Now let me talk about what I really think come down to the factors that ultimately I hope the Court will allow the adjustment that we're asking for.

First, Mr. Black is, as you know, a noncitizen; he is really a stranger in this country. He knows this country because he has been spending a lot of time on this case. He will not, based on the policy, be eligible to put in a camp or another institution. He is going to be designated it appears to a private prison facility. Obviously, this administration has changed course from the previous administration in deciding that that's something they want to do for noncitizens. We take the Office of Inspector General's reports very seriously. These places are very harsh. Mr. Black obviously is going to be put in a facility which is higher security than he would be designated simply because he happens to not be from the United States. And there is more than a reasonable basis to believe

that Mr. Black will not obtain proper medical or other care in such a facility. And we will talk about in a moment that issue.

But in terms of disparate impact treatment, that's a very harsh reality -- because of things that have nothing to do other than the fact he was brought here as opposed to the UK -- that Mr. Black should suffer an additional heaping of punishment above what others will suffer in places that are really not doing honor to our system.

Now, I understand that we have situations here and we have other kinds of offenders that are not here, that are out here, but there are limits to what the Court can do, and there are other considerations -- safety and other things -- where we have to use these kinds of places -- but it's not necessary for Mr. Black, and I think respectfully it's not fair for Mr. Black.

Also, there will be then an indeterminate period of detention for removal, which of course is -- Mr. Black only came here because he was asked to come here.

THE COURT: Well, it's actually a question I asked myself. He is not illegally in the country.

MR. LEVINE: I will tell you there are some things that one just has to sometimes -- I have to accept. And while it makes no sense to me, and we will obviously consent to removal, he is happy to leave now and not come back, but it's a

bureaucratic process that is one that is also, in addition to being a difficult one -- right now overburdened in a way that our country's immigration system has never been overburdened, so adding another person who doesn't need to be in it I think not only is harmful to Mr. Black -- because as you have also seen the condition of some of these places is, as has been said by the reports, deplorable, adding another body that doesn't need to be there I think as a matter of social policy is also not necessarily a positive good.

And with all of these issues, the other additional heaping of cruelty here is that Mr. Black has nobody here except us. He has no family here -- they're all overseas -- and effectively he will not see them; he have no contact with them.

I do thank two of Mr. Black's family members, his sister and brother-in-law have really graced us to come here, and we are really appreciative. But that's not going to be the case if he is incarcerated, and that isolation is an additional penalty which is over and above what I think is necessary.

Now, your Honor, I want to address the medical condition, but I also have privacy concerns so I will do it generally. I will be happy to answer more specific questions at side bar.

We have a real problem. Mr. Black is one of those clients who doesn't like to complain, who doesn't like to

necessarily tell us when he doesn't feel good because he feels it's his job to sort of soldier on. But we have a real problem; he has a serious heart condition.

I will tell you we have gone to great efforts to advance appointments, but his current condition -- you've seen the letters -- is not good. We are hopeful that it can be brought under control. It's not right now. The procedures he has had -- he has had two -- he is going to have a much more serious procedure we think in about two months. That's sort of where we are.

But, you know -- and having spoken to his doctors, this is an existential problem. If not brought under control, or if not given absolutely appropriate adequate care, this will substantially reduce Mr. Black's life expectancy. One of our biggest concerns here is just the possibility of not adequate care, and there is a real risk of that.

Additionally, I will tell you Mr. Black is not the man that we know. Even now he is walking, takes breaks and he has a problem. I think it's not being cute to say this case has literally broken his heart. He is ill; he is also dealing with other nonphysical issues, which while not uncommon here are nonetheless just as real, they're pronounced, and this has been a difficult process. Therefore, we think our sentence is also fully justified under the factor that allows for rehabilitation -- as medical care is part of that

rehabilitation -- but we're asking frankly to not have Mr. Black use resources in a U.S. facility for medical care but he will obtain those resources at home in a way that his doctors think is appropriate.

I can't tell you that I'm more concerned about something in part because Mr. Black is not a person that complains, but this is a real problem, and it manifests in a lot of ways.

So, I think that those two factors alone, what we're asking for here -- I'm not asking for him not to be punished or pay a fine. I'm simply saying we can adequately confine him and punish him in a way that is not unnecessarily difficult both on the immigration side and frankly on the medical side.

And I think when you look at those factors -- and then there is one other thing. I haven't said anything about it, and this is really the last point I will make -- then I ask, as I did at the beginning, look at this man as a whole. A lot of defendants come before you -- I know you get dozens and dozens of submissions -- but I respectfully think Mr. Black has lived otherwise a very good life. The letters that you have received that span really his whole life from people who have known him for 40, 50 years all the way in time paint a remarkably consistent picture of a man that is humble in the right sense. He is caring and thoughtful and forthright with people.

And the letters are not, as you often see, a series of

platitudes; they are very specific repeated examples over a long life of consistent behavior of frankly true thoughtfulness and concern and doing what you do because it's the right thing, not for praise. He is actually described by everyone as very self-effacing, there is no bragging in him. And his dedication to people as a father, as a husband, a son, brother, uncle and as a friend is really I think, your Honor, special here.

You know, you see in these letters so many anecdotes that to me it's not the big stuff, it's the little things he does that shows who he is. He's the man that when your child is having an emergency problem he's the one that's there to help the child and help the parents. When there is a boy who as a young man there was a young man challenged in the town, he's the young man that brings him to the game to get him involved to change his life. He's the guy who doesn't forget his old mates in his town just because he is now a banker. He is there to play with them in part of their crew. He's the man that close family, distant family, and even new friends, talk about as the man to come to when you have a crisis, when you need help or, more importantly he's the one that checks in and asks how you're doing and is the rare person that genuinely wants to hear the answer; he generally wants to know.

And frankly, your Honor, these letters were so consistent, and they come from across the world. You know, these are people that have a very different way of speaking,

but they come through in a way that to me at least is incredibly powerful because it's incredibly consistent with who he is.

And there is some intangible quality to people, and a lot of different names for people who do something that is good with others. You can call it the golden rule. You can call it categorical imperative. Whatever you call it, these letters are testament to who this man is.

You know, you have seen, your Honor, the letter from his wife and the explanation of why she is not here today. I don't want to go into that. I just want to say this: Mr. Black has also raised an amazing family. He has an amazing three young women, his wife, they are glowingly described and not in simple euphemisms about who they are. And his decision on how to behave today and whether or not to involve them here to me as a father is one of the most fatherly things that I have seen. And I think there is no question that when you look at what has happened here -- and regardless of the reason, there are consequences -- Mr. Black, as you read in these letters, he has already endured serious punishment in terms of his career, in terms of the emotionally crushing effects this has had on him. It's not sufficient, but I think if we read these letters of close family and friends, listen to how Mr. Black has changed, he's struggling. Whatever the need is for punishment, that has and will continue to be extracted through

that. There is a torture of this that has occurred that is the outgrowth of the activity, but it's real and it's occurred.

So, the question then becomes, Judge, what are we really asking for? We're simply asking for him to be able to serve a sentence in the UK. And the Court ordered us to address that in our submissions, and we did. There is not -- we don't think given the probation department's recommendation -- the transfer program doesn't work, and frankly, according to the most recent e-mail, it is impossible to gauge. We think that a sentence that would even make it relevant would be inappropriate, so I'm not going to bother talking about that, because I think it's not just something we can count on in any way.

What we did, your Honor, was we asked the question, OK, let's simply figure out how Mr. Black can receive the same kind of sentence he could receive if he was a U.S. resident. I don't want special treatment, I just want equally available options.

So, what we believe -- because we think home confinement here is an appropriate sentence -- special condition -- is we said how do we do that. Well, first, given the technological world, if you want to have a similar system to make sure we know where he is and he is confined and he is suffering those penalties, that's fine. I mean the technology is on all of our desktops. There is GPS, Skype, e-mailing

every day. All of those things are completely available, and they're reliable, and because of the time difference if they want to make sure that Mr. Black is at 9 o'clock is home, the day isn't even over, you can do it that way. But we didn't think that was a sufficient answer.

So, what we did was in the UK any kind of electronic monitoring is actually not done by the UK government; it's contracted out. So, we got another very reputable firm with major law enforcement credentials, and we said to them we need you to tell us can you confine somebody with electronic monitoring, these are the conditions, and you have to report directly to the Court and the probation department. And we've given you their report; we've given you their -- they are serious law enforcement people, and they will confine Mr. Black and ensure that he follows whatever conditions this Court orders.

Now, I think the record shows that Mr. Black is going to do that anyway. I don't think any of us have a serious concern about noncompliance. But to the extent the Court wants a robust additional punishment that sends a clear message under these circumstances, we have provided that option. We have talked about it with probation; I think that they will be guided by what the Court does. But there is no technological or issue with doing it. And it's not special. It's simply the same as Mr. Black has -- it's the same as it would be if

Mr. Black was a U.S. citizen or resident.

Your Honor, we've traveled a long road here, but I think today, as you've said repeatedly, you need to have punishment but you need to have proportionality, you need to have a sense that Mr. Black is being punished for what he did and not all this other stuff. You need to look at how this system -- this is not about prosecution, it's about punishment -- is being applied.

And, frankly to make these two men the tip of the spear -- given what we know about all these facts -- they should be punished, but they shouldn't be punished more than is necessary.

Therefore, this is a humbling day, and with humility I say to you, Judge, I truly submit that the sentence that is sufficient but no greater than necessary is a sentence that allows Mr. Black to be punished but to do it where he belongs, in the UK, because even if you impose a short sentence here it's going to have a scathing set of potential consequences and potential results that are so bad that no one here, a fair minded person, would feel that that is the right thing to have happened.

So, I thank the Court for its many courtesies, and I respectfully ask please grant our request. Thank you for your time and attention, your Honor.

THE COURT: Mr. Connolly, do you have anything you

want to say?

THE DEFENDANT: No, your Honor.

MR. BREEN: Respectfully, your Honor, because of a appellate issues --

THE COURT: I quite understand.

Mr. Black, do you have anything you want to say?

DEFENDANT BLACK: Yes, please, your Honor.

Thank you for the opportunity to speak, your Honor. As I believe you are aware, this process has completely shattered me. I have come to this country voluntarily because I believe in the process and the law, and I would like to thank your Honor.

I am devastated by the fact I ended up here before you. I feel incredible remorse for my involvement in these events and so profoundly for my wife an children and those that rely on me and believe in me.

My life will never be the same. I am committed to my family and all those who supported me over these past many years. I ask for leniency, your Honor, because I want to be able to spend the rest of my days making it up to them.

I would like to take a moment to express my thanks to these people: I want to thank my attorneys for their skill and the phenomenally hard work over the last few years. Their dedication to my cause is an inspiration. I also want to thank my sister Lindsay and brother-in-law Douglas for taking the

time out of their lives and responsibilities to fly across the ocean and support me here. And I want to thank my many friends and family who took the time to write on my behalf. And most importantly, I want to thank my wife and children whose love and support is my entire world.

Thank you very much, your Honor.

THE COURT: Okay. I have to turn to the elephant in the room because it is raised without being named by everyone's presentation.

Mr. Connolly -- who was lucky that I don't bear him a grudge for the silly thing he did last summer -- stole my thunder on this one. He called his self-published screed "Scapegoat." It is a word that I have thought of often over the past three years. The Levitical scapegoat was a real goat, which was is sent out into the wilderness after the high priest had symbolically laid the sins of the people on its back.

We have syncretized this ancient religious image, and today we use it to refer to people who are blamed for the wrongdoings, mistakes and faults of others -- especially for reasons of expediency.

Mr. Connolly believes that he and Mr. Black are being made scapegoats here, to which I say: Yes and no.

Gavin Black and Matthew Connolly were participants along with many other people, a few of whom have been indicted here and abroad, most of them have not, in a massive effort,

one that went on at many if not all of the submitting banks over a course of years to manipulate LIBOR to benefit the banks' trading positions.

So, it's not quite fair, gentlemen, to say that you're being blamed for the wrongdoing of others. The scapegoat was sinless; you are not. You haven't done nothing wrong. You were found guilty by a jury of 12, and there is evidence to support their verdict, and you should be sentenced for what you did.

But I do think it is fair to say that the government has used Mr. Connolly and Mr. Black, as well as a few other people -- none of whom was at the highest levels -- as proxy wrongdoers, to make them an example for the wrongdoings of those two institutions, Deutsche Bank and Rabobank in this court, and for similar wrongdoing of other unindicted institutions as well.

Now, I quite understand that the government could not possibly prosecute all of the people who were involved at any time with attempts to manipulate U.S. dollar LIBOR. It was expedient for the government to focus on a few people at a limited number of institutions, and the government did so. But the government -- and to its credit Mr. Koenig has been perfectly honest -- now asks the Court to impose excessively large punishments relative to the actual wrongdoing perpetrated by these two individuals on Mr. Connolly and Mr. Black because

of a far more widespread problem in which hundreds of other people at Deutsche Bank and elsewhere were also wrongdoers, and the government asks that I do that to make an example of them. The government's really sole basis among the 3553 factors for asking for the sentence it seeks -- it's a guideline sentence -- is general deterrence. I yet cannot make Mr. Connolly and Mr. Black scapegoats for the sins of the entire industry. They stand convicted of crimes for which they will be punished, and that is all they will be punished for.

Turning specifically to the Section 3553(a) factors: The crime was serious and not victimless, but the defendants, these two men, were very minor participants in that crime. This is especially true of Mr. Connolly, and it's also true of Mr. Black when looked at relative to others. Mr. Levine is not incorrect when he says that the government cooperated down in this case.

The defendants have lived otherwise exemplary lives. The letters that I have received, and I have a read them, are genuinely moving. They present no risk of recidivism and no danger to the public.

Under Section 3553, I must of course consider the sentencing guidelines -- as I have labored to calculate them -- but I, like probation Officer Kim, find them to be inconsistent with the parsimony principle that governs sentencing.

The flaws in the fraud guideline, as articulated by

Judge Rakoff in the Rabobank sentencings, and by many other judges of this and other courts -- including me on other occasions -- make a guideline sentence way out of line with respect to these two men, and they would be even more out of line if I had fully accepted the government's calculation of intended loss.

The guidelines sentences for these defendants are also out of line with similarly situated defendants who have committed the same crime. The only fair comparators in my estimation are others who were involved in the similar effort to nudge LIBOR in one direction or the other. The two Rabobank traders who went to trial before Judge Rakoff, who were much more involved at their bank with this exercise than Messrs. Connolly and Black were at Deutsche Bank, were given relatively modest below guideline sentences, which of course they ended up not serving because of the Kastigar reversal and the vacatur of their convictions. As far as I know, nobody else has gone to prison, with the exception of this person Mr. Hayes, whom I know nothing about, except what I read in the sentencing transcript for the Rabobank case, and what I read there does not make him anything like a genuine comparator to Mr. Connolly and Mr. Black. He apparently bribed people, he obstructed justice, all way beyond anything that went on here, and he ended up serving -- his sentence was 11 years but he ended up serving in England, so he ended up serving five and a half

years. These defendants were bit players by comparison and would have to be sentenced to significantly less than that for their sentences to be fairly proportional.

A guideline sentence is terribly out of whack comparing in particular Mr. Connolly, who made just six documented requests -- and I think there is no real basis on which the government could even allege seriously that he made any other requests -- with Mr. Parietti, who was far more culpable and who got away with not only no jail time but he got to keep his $9 million bonus that was earned during the period of the conspiracy. I recognize that he was a cooperator but, as I've already said, I personally had some issues with his testimony, and the jury apparently did too since it acquitted Mr. Connolly of the counts involving Mr. Parietti's activity. I prefer to sentence Mr. Connolly for his own proven misconduct, which in this case consists of the six requests that he made.

I thus reject a guideline sentence as appropriate for either defendant.

The government -- knowing full well that neither of these defendants needs to be punished any more than they already has been in order to fulfill the goal of specific deterrence, extols the goal of general deterrence -- extols the goal of general deterrence as justification for imposing a lengthy term of incarceration on these two men.

Now, it turns out I've had to think about judicial philosophy recently both because I was teaching a class and because I was simultaneously working on this sentence, and I realized that I'm not a big fan of general deterrence as a driving factor in punishment. If you want to refer to the great philosophers of punishment, I'm more a Kantian than Beccarian; I'm a retributivist than a utilitarian. What that means is I'm more interested in punishing someone for what he did than making him an example to others so that they will not do the same. It's a matter of personal philosophy.

But general deterrence is a Section 3553(a) factor, and I do have to consider it, and I have considered it. And I've considered it in light of everything that you all have said here and that you have written before saying it, and I have considered it in the way that Judge Rakoff considered it at the Rabobank sentencing. And he is a great scholar in this area, and he is really much more interested in these things as a philosophical matter than I think I am naturally, and he really does read a lot of stuff about this. And I thought about it also in the context of what I know about the financial services industry and the people who work in it. And here is what I conclude:

To the extent that the players in the market are capable of being deterred by what has happened to these two men -- including specifically those players in the market who

thank God every night before they go to bed that they got away with what Matt Connolly and Gavin Black were convicted of -- and there are quite a few of them out there -- a long period of incarceration for these defendants is simply not needed to accomplish the goal of general deterrence. The players in the market have witnessed their arrest, the years spent in chancery -- which are not over yet -- the loss of jobs and employability, the financial stress on them and their families, the loss of status in the community, and at least in Mr. Black's case the development of a serious health issue, all collateral consequences that play into general deterrence.

All other things being equal, I would sentence Mr. Black to a modest, short term of imprisonment, probably quite in line with probation Officer Kim's recommendation -- his very thoughtful recommendation -- and I would sentence Mr. Connolly to a lesser sentence because these two men are not equivalent in the great LIBOR scheme of things. They're both low on the totem pole, but Connolly is lower than Black.

The problem here is that all other things aren't equal. And I've struggled with this for weeks. I did my own research. And Eric Silverberg, my former law clerk, is here today; he worked on this for me. If there were a way that I could sentence Mr. Black to serve a term of incarceration in the United Kingdom, I would do it, but there is no way. There is a procedure for transferring a prisoner from the United

States to the United Kingdom. It is lengthy. It is cumbersome. It is uncertain of result. And it is impossible to invoke it until you are serving a sentence in an institution in the United States. If I could sentence Mr. Black to a term of incarceration -- a brief term of incarceration -- knowing that he would go to a facility appropriate to his criminal conduct, I would do it. But I know that I can't. I know that simply because he is a noncitizen -- and I use that term advisedly. He is not an illegal alien. But because he is a non-citizen, he will not be eligible to serve his sentence in the same way that any American citizen who stood convicted of this crime would serve. And that's not right.

And for reasons that are incomprehensible to me, were I to sentence him to a short term of imprisonment -- which would be served in a private facility and not at some place like FCI Allenwood, or not at a medical facility, which I think I would strongly recommend, given what I know about Mr. Black's medical condition -- for reasons I cannot comprehend, at the end of that term he could not walk out the door and be picked up by Mr. Levine and taken to the airport. He would be treated like an illegal alien, and he would be released into the custody of ICE, and at some point long after my intended sentence had expired he would be deported. And that's not right.

I have gone back and forth, and back and forth, and

back and forth on this, but when I look at this chart, McGillicuddy Exhibit 1, and look at the number of instances out of 130 in which Gavin Black made a request of a submitter to try to move LIBOR, and the amount of money that the government estimates was intended to be lost -- and I've accepted the government's formula, not without thinking that there is a lot wrong with it -- though I appreciate your effort -- I can't bring myself to impose a sentence of incarceration in the United States for Mr. Black. And since I can't impose a sentence of incarceration to be served in the United Kingdom on Mr. Black -- which as I said I would do -- I am remitted to sentencing him to some form of home confinement to be served in his native country, and I do that because -- while, Mr. Black, I don't like the way you played the game -- you were really a bit player in this.

Mr. Connolly was barely a player at all. And given what has happened to everybody else in this case, and what has not happened to a lot of people who aren't in this case -- and aren't in other cases -- it would be a travesty to sentence Matt Connolly to a term of incarceration.

And certainly if I'm not going to sentence Mr. Black to one because of the unusual "all other things are not equal" collateral consequence of his not being a United States citizen, I can't mete out a sentence of imprisonment on Mr. Connolly, who truly -- I have been through this evidence --

is the least culpable person I have heard about.

So that I suppose is the consequence of cooperating down, as Mr. Levine put it. The real sentence here began three years ago and will last for the rest of your lives. It will include the payment of a substantial fine -- one that will exceed the dollar amount of intended loss as calculated by the government for which you are personally liable but which will come nowhere close to the $3 million fine sought by the government -- limit all restrictions on your liberty for a while, and will involve the certain knowledge that nothing can give you back your old lives, that in that sense what you have described to me as a nightmare never ends.

I emphasize that for me the proportionality to others involved is a really important consideration in sentencing. It just is. I'm always uncomfortable when I'm asked in any context -- it usually happens in the drug context -- to sentence the low man on the totem pole while the big guy goes free.

I have reviewed the presentence report. I'm going to ask Mr. Kim -- who has done such yeoman service -- to revise them to reflect the findings that the Court has placed on the record today. With those revisions I will accept and adopt them as my findings. I have already given you the guideline calculations.

Mr. Connolly, will you please rise. Docket number 16

Crim. 370. I hereby sentence you to time served, plus a term of two years' supervised release, to include a term of six months' home confinement. That's on each count. The sentence is to run concurrently. And I sentence you to pay a fine of $100,000. This fine is payable due and payable immediately, together with the special assessment of $300. That's $100 per count.

During the term of your supervision you must not commit another federal, state or local crime; you must not unlawfully possess a controlled substance; and you must refrain from the unlawful use of a controlled substance, submitting to one drug test within 15 days from your release from imprisonment, and at least two periodic drug tests thereafter as determined by the court. You must cooperate in the collection of DNA as directed by the probation officer. You must pay the assessment imposed in accordance with 18 United States Code Section 3013; and you must pay the fine, and the fine is due and payable within 60 days. You must notify the court of any material change in your economic circumstances that might affect your ability to pay the fine or the special assessment. And you must comply with the standard conditions that have been adopted by this Court, which will be given to you. You will look at them, and you will sign off on them. And until such time as the fine has been fully paid, you must comply with the special condition of providing your probation

officer with access to any financial information that the probation officer requests.

Restitution is not an issue in this case. Forfeiture is not applicable.

You may be seated, sir.

Mr. Black, under docket number 16 Crim. 370, I hereby sentence you to a term of time served, plus three years of supervision, to include a term of nine months' home confinement to be served in the United Kingdom, under such circumstances and in accordance with such providers as the probation department shall contract with; or, if the probation department deems that to be inappropriate, then from abroad by our probation department. I don't know really if that's electronically feasible or not, and that's why I have to leave it to probation in the first instance to explore that topic.

I should say -- and this applies to both of you -- during the period of home confinement you must remain in your residence, and you may not leave -- in your case for six months; in your case for nine months -- for any purpose except the following: To attend medical appointments, to attend religious services, to attend any further court appearances that may be necessary. I rather imagine there will be an appeal in this case, so...

The idea is you're a prisoner in your own home. And I assure you that after six months in your case, Mr. Connolly, or

nine months in your case Mr. Black -- and I've heard this from people -- you will hate the sight of your own home, and you will be very, very happy to get out.

Mr. Black, I impose upon you a fine of $300,000, as recommended by the probation department, and a $200 special assessment. The fine is due and payable in 60 days. The special assessment is due and payable immediately.

The same conditions of supervision. You have a nine month period of home confinement, and during that period and for the rest of your term you must not commit another crime, federal, state or local; you must not unlawfully possess a controlled substance; and you must refrain from the unlawful use of controlled substances. I am suspending the mandatory drug testing condition. I gather that Mr. Black is going to be under rather constant medical care in the United Kingdom. You must cooperate in the collection of DNA as directed by the probation officer, pay the assessment imposed in accordance with 18 United States Code, Section 3013, and pay your fine within 60 days, notifying the Court of any material change in your economic circumstances that might affect your ability to do either of those things. You must comply with the standard conditions of supervision, which will be given to you for your review and you will sign off on them. And you must provide the probation officer with access to any requested financial information while the fine remains unpaid.

Restitution is not an issue. Forfeiture is not being sought.

You may be seated.

Matthew John Connolly and Gavin Campbell Black, you have the right to take an appeal from the verdict of the jury and from the sentence that has been imposed upon you. You have a right to counsel in connection with any appeal that you may choose to file, and if you do not have the funds with which to hire an attorney, counsel will be appointed to represent you.

Mr. Connolly, do you understand that?

DEFENDANT CONNOLLY: Yes, I do, your Honor.

THE COURT: Mr. Black, do you understand that?

DEFENDANT BLACK: Yes, your Honor.

THE COURT: It is possible given the sentence that I have imposed that the government may decide to take an appeal. If it does, you have the same right to representation and the right to a publicly financed lawyer if you cannot afford to hire private counsel. Do you understand, sir?

DEFENDANT CONNOLLY: Yes, your Honor.

THE COURT: Do you understand, sir?

DEFENDANT BLACK: Yes, your Honor.

THE COURT: OK. What else do we have from the government?

MS. ANDERSON: I just wanted to clarify. If for some reason probation does not have a set-up to do this and they do

go privately, is this going to be a cost -- are you ordering the cost borne by the defendant?

THE COURT: Yes, costs have to be borne by the defendant.

Thank you, Ms. Anderson. Thank you.

Anything else from the government?

MR. KOENIG: Nothing further.

THE COURT: Thank you, Mr. Koenig.

Mr. Breen, anything else from Mr. Connolly?

MR. BREEN: Your Honor, the issue of bail pending appeal.

THE COURT: Oh, please. Sentence stayed pending appeal. I knew I would forget something. Also for Mr. Black. Anything else from Mr. Black?

MR. LEVINE: No, your Honor. Thank you very much.

THE COURT: OK. A difficult case in every respect.

These proceedings are closed.

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